

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
RONCO PAINTING, INC.,

Appellant,

V.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

**Respondent.**

PCHB Nos. 80-188 and 80-189

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the consolidated appeal from the issuance of two \$250 civil penalties for the alleged violation of Section 9.11(a) of Regulation I came before the Pollution Control Hearings Board, Nat W. Washington presiding, David Akana and Gayle Rothrock, members, in Seattle, Washington, on March 16, 1981.

Appellant was represented by its attorney Laurason T. Hunt; respondent was represented by its attorney Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Appellant company was charged with two violations of Section  
4 9.11(a) of Regulation I by causing or permitting the emission of an  
5 air contaminant or water vapor that caused detriment to health, safety  
6 or welfare of any person or caused damage to property or business from  
7 an abrasive blasting operation on a water tower located near Dayton  
8 Avenue North and North 145th Street, Seattle, Washington.

9 Notice of Violation and Order of Civil Penalty No. 4825 charged  
10 that a violation of Section 9.11(a) took place on or about August 25,  
11 1980, at 10:30 a.m. at 14502 Evanston Avenue North, Seattle,  
12 Washington.

13 Notice of violation and order of civil penalty No. 4826 charged  
14 that a violation of Section 9.11(a) took place on or about 11:20 a.m.  
15 at 14515 Evanston Avenue North, Seattle, Washington, on the same day.

16 II

17 The appellant had also been charged with two previous violations  
18 relating to the same abrasive blasting operation which had occurred on  
19 August 22, 1980. One of the charges was for the violation of Section  
20 9.11(a) of Regulation I by causing or permitting the emission of an  
21 air contaminant or water vapor that caused detriment to health, safety  
22 or welfare of a person or caused damage to property or business at 508  
23 North 145th Street, Seattle, Washington.

24 The other charge was for the violation of Section 9.15(a) of  
25 Regulation I by causing or permitting particulate matter to be  
26 handled, transported or stored without taking reasonable precautions

1 to prevent the particulate matter from becoming airborne.

2 The appellant did not contest either of these two violations and  
3 paid the fines levied thereon.

4 III

5 Respondent's inspector on August 22, 1980, in response to a  
6 complaint, went to the neighborhood where appellant's abrasive  
7 blasting operation was taking place. He observed abrasive blasting  
8 material blowing off the top of the water tank and falling on the  
9 property located at 14502 Evanston Avenue North and 14515 Evanston  
10 Avenue North. Owners of neither of these properties were home, so the  
11 inspector was unable to secure a signed complaint from either of them.

12 IV

13 On August 25, 1980, at about 10:30 a.m., respondent's inspector  
14 returned to 14502 Evanston Avenue North. He observed that particulate  
15 matter from appellant's abrasive blasting operation was still present  
16 on the property in large quantities. He secured the owner's signature  
17 to a formal complaint and prepared a notice of violation which charged  
18 the appellant with violating Section 9.11(a) of Regulation I on or  
19 about August 25, 1980, at 10:30 a.m. This notice of violation  
20 resulted in Notice and Order of Civil Penalty No. 4825, one of the  
21 subjects of this appeal.

22 On the same day respondent's inspector returned to 14515 Evanston  
23 Avenue North observing that particulate matter from appellant's  
24 abrasive blasting operation was still present in large quantities. He  
25 secured the owner's signature to a formal complaint and prepared a  
6 notice of violation charging the appellant with violating Section

1 9.11(a) of Regulation I on or about August 25, 1980, at 11:20 a.m.  
2 This notice of violation resulted in Notice and Order of Civil Penalty  
3 No. 4826 which is one of the subjects of this appeal.

4 V

5 No abrasive blasting was performed by appellant on the subject  
6 water tank on Monday, August 25, 1980, and no emissions were caused or  
7 permitted by appellant on that day.

8 The appellant may well have caused or permitted emissions of an  
9 air contaminant that caused detriment to the health and safety of the  
10 residents of 14502 and 14515 Evanston Avenue North and to their  
11 property on August 22, 1980, but did not cause any such emissions on  
12 August 25, 1980. On August 25, much abrasive blasting material was  
13 observable at 14502 Evanston Avenue North at 10:30 a.m. and at 14515  
14 Evanston Avenue North at 11:20 a.m., but it was material which had  
15 been emitted on August 22 and before, but not on August 25. There was  
16 no showing that any material previously emitted by appellant's  
17 abrasive blasting activity was carried from the water tank or from the  
18 ground by wind to either of the above-described properties on August  
19 25, 1980.

20 VI

21 Appellant's notices of appeal challenge each notice and order of  
22 civil penalty on the sole ground that appellant, its agents and  
23 subcontractors, conducted no operations whatsoever on the water tower  
24 on Monday the 25th day of August. Thus, appellant, who has paid the  
25 fines levied for two violations on August 22, 1980, came to the  
26 hearing prepared to meet the specific charge that the violations had  
27 taken place at specific times, 10:30 a.m. and 11:20 a.m., on

1 August 25, 1980.

2 The respondent had notice that the issue would be whether the  
3 violations took place on August 25, 1980, and did not move to amend  
4 the charges.

5 VII

6 Any Conclusions of Law which should be deemed a Finding of Fact is  
7 hereby adopted as such.

8 From these Findings of Fact comes these

9 CONCLUSIONS OF LAW

10 I

11 Respondent failed to establish that appellant violated Section  
12 9.11(a) of Regulation I on August 25, 1980, as charged.

13 II

14 Respondent, in closing arguments, raised for the first time the  
15 contention that since the charges alleged that the violations took  
16 place on or about August 25, 1980, that the respondent had met the  
17 burden of proof by the evidence showing that the violations had  
18 actually occurred on August 22, 1980.

19 Respondent's inspector well knew that appellant had violated  
20 Section 9.11(a) on August 22, 1980, but deliberately elected to charge  
21 appellant with two additional violations on August 25, 1980, at  
22 specific times on that day.

23 The words "on or about" allows flexibility as to the date an  
24 offense has been committed when the pleader is uncertain as to the  
25 exact date, but in this case the respondent was in possession of the  
26 facts and knew that the appellant had caused or permitted emissions on

1 August 22, 1980. If it had wanted penalty notice 4825 and 4826 to  
2 cover these emissions, the notices should have so specified.

3 The appellant has paid fines for two offenses committed on August  
4 22, 1980. In view of this and in view of the specificity of the  
5 charges which even set forth the time of day the violations occurred  
6 on August 25, appellant had no reason to believe he would be called on  
7 to defend against actions which had taken place on August 22, 1980.

8 We therefore hold that the only issue properly before the Board  
9 was whether the appellant violated Section 9.11(a) on August 25,  
10 1980. Accordingly, there were no violations of Section 9.11(a) as  
11 alleged and civil penalties Nos. 4825 and 4826 should be vacated.

### 12 III

13 Any Findings of Fact which should be deemed a Conclusion of Law is  
14 hereby adopted as such.

15 From these Conclusions, the Board enters the following  
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ORDER

Civil Penalties Nos. 4825 and 4826 against Ronco Painting, Inc.,  
are each vacated.

DATED this 1<sup>st</sup> day of April, 1981.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington  
NAT W. WASHINGTON, Chairman

David Akana  
DAVID AKANA, Member

Gayle Rothrock  
GAYLE ROTHROCK, Member